

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

GEORGE L. ROSAS
TDCJ-CID #711998

V.

PATSY PEREZ, ET AL.

§
§
§
§
§

C.A. NO. C-05-102

ORDER DENYING RECONSIDERATION

Pending is plaintiff's motion for reconsideration pursuant to Rule 59(e) of the Federal Rules of Civil Procedure. (D.E. 44). For the reasons stated below, plaintiff's request for reconsideration is DENIED.

I. PROCEDURAL BACKGROUND

Plaintiff filed suit on February 25, 2005, alleging, inter alia, that he was not properly notified by the county clerk of a pending paternity suit to which plaintiff was a party.

On July 22, 2005, plaintiff filed a motion to amend the complaint, seeking to include three deputy clerks. (D.E. 34). On August 11, 2005, the Court denied the motion to amend. (D.E. 40). On August 26, 2005, plaintiff filed a motion for reargument, which sought reconsideration of the denial of the motion to amend. (D.E. 44).

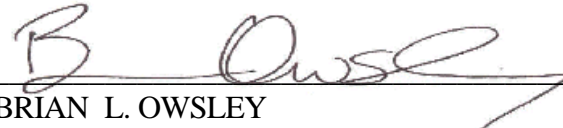
II. DISCUSSION

Rule 59(e) motions "serve the narrow purpose of allowing a party 'to correct manifest errors of law or fact or to present newly discovered evidence.'" Waltman v. International Paper Co., 875 F.2d 468, 473 (5th Cir. 1989) (citations omitted). Rule 59(e) cannot be used to introduce evidence that was available prior to the entry of judgment, nor should it be employed to relitigate old issues, advance new theories, or secure a rehearing on the merits. Fontenot v. Mesa Petroleum Co., 791 F.2d 1207, 1219 (5th Cir. 1986). To prevail on a Rule 59(e) motion, the moving party

must demonstrate the existence of (1) an intervening change of controlling law; (2) the availability of new evidence; or (3) the need to correct a clear error or to prevent manifest injustice. Id. The decision to reopen a case is within the sound discretion of the district court. Lavespere v. Niagara Mach. & Tool Works, Inc., 910 F.2d 167, 174 (5th Cir. 1990), abrogated on other grounds by Little v. Liquid Air Corp., 37 F.3d 1069, 1075 n.14 (5th Cir. 1994) (en banc).

Plaintiff argues that his pending motion provides the Court with information that it had previously overlooked. (D.E. 44, at 1, 2). This assertion notwithstanding, plaintiff's allegations against the deputy clerk defendants still fail to state a constitutional issue. Accordingly, for the reasons addressed in the Court's order, (D.E. 40), plaintiff's motion for reconsideration, (D.E. 44), is hereby denied.

ORDERED this 30th day of August 2005.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE